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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

JFK INVESTMENT GROUP,  
LLC,

Plaintiff and Respondent,

v.

FARIBA KOBI et al.,

Defendants and Appellants.

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FARIBA KOBI et al.,

Cross-complainants and  
Appellants,

v.

KAMBIZ JAVAHERI et al.,

Cross-defendants and  
Respondents.

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B287455

Los Angeles County  
Super. Ct. No. BC560519

APPEALS from a judgment and order of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Judgment affirmed; order reversed.

Weiss & Zaman, Thomas J. Weiss and Shawn Zaman for Defendants, Cross-complainants, and Appellants.

Kaplan, Kenegos & Kadin, Jerry Kaplan and David Scott Kadin for Plaintiff, Cross-defendants, and Respondents.

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## INTRODUCTION

After a bench trial, the court entered judgment in favor of JFK Investment Group, LLC (JFK) and one of its members, Kambiz Javaheri (Javaheri), and against JFK's other member, Fariba Kobi, and her son, Abraham Kobi.<sup>1</sup> After finding that Abraham did not have a membership interest in JFK, the court ordered Abraham to transfer title to one of JFK's assets—an apartment building—back to JFK. Although the court ordered the sale of the property, with the proceeds to be evenly split between Javaheri and Fariba, it did not dissolve JFK. The court also awarded JFK and Javaheri attorney's fees under an indemnity provision in JFK's operating agreement.

Appellants contend the judgment should be reversed because the court failed to adjudicate Abraham's claim for quantum meruit and Fariba's statutory claim for dissolution of JFK. We affirm the judgment because appellants did not include a quantum meruit claim in the cross-complaint and Fariba's request for dissolution of JFK was considered, and rejected, by the court.

Appellants also contend the attorney's fees order should be reversed because the indemnification provision in JFK's operating agreement does not provide for an award of attorney's fees against them. We agree the indemnification provision in the operating agreement is not an attorney's fee provision. Accordingly, Javaheri and JFK cannot recover fees from appellants based on the reciprocity principle of Civil Code section 1717 (hereafter Section 1717). We therefore reverse the

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<sup>1</sup> We refer to Fariba Kobi and Abraham Kobi individually by their first names. At times, we refer to them collectively as appellants.

attorney's fee order to the extent it requires appellants to pay for Javaheri's or JFK's attorney's fees.

## **FACTS AND PROCEDURAL BACKGROUND<sup>2</sup>**

JFK is a limited liability company formed in 2003 to invest in, acquire, operate, and sell real properties. Javaheri and Fariba each had a 50 percent membership interest in JFK. Although a 2012 tax return for JFK showed that Abraham received 25 percent of Fariba's membership interest, this was done "merely for tax purposes and to satisfy the lender." Fariba is Javaheri's aunt; Abraham is Fariba's son and Javaheri's cousin.

In 2004, JFK obtained title to a four-unit apartment building located on 27th Street in Los Angeles (the property). From time to time, Abraham agreed to take title to the property in his name for purposes of refinancing loans secured by the property. To that end, from 2004 through 2012, title to the property transferred back and forth between JFK and Abraham. At all times, however, rental income from the property was divided evenly between Javaheri and Fariba.

In September 2014, Fariba and Abraham attempted to sell the property without JFK's and Javaheri's consent. Abraham also refused to transfer title to the property back to JFK. Accordingly, in October 2014, JFK sued Fariba and Abraham for declaratory relief, specific performance, breach of fiduciary duty, and injunctive relief concerning the sale and ownership of the property.

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<sup>2</sup> In their statement of facts, appellants do not cite any evidence from the trial. We glean the relevant facts from our review of the documents in appellants' appendix, including the court's proposed statement of decision and judgment.

In August 2015, Fariba and Abraham filed a cross-complaint. Both appellants asserted claims against Javaheri for fraudulent inducement, promissory fraud, breach of fiduciary duty, specific performance, and declaratory relief. Appellants also asserted a single claim against JFK as a “nominal cross-defendant” for dissolution of the company based on a purported deadlock in membership, business management, and direction.

The case was tried to the court over two days in May 2017. Five witnesses, including Javaheri, Fariba, and Abraham, testified. Sixty-seven exhibits were admitted into evidence.<sup>3</sup>

In September 2017, the court issued a proposed statement of decision in which it ruled in favor of JFK on its complaint, and in favor of Javaheri and JFK on appellants’ cross-complaint. The court found that JFK is the owner of the property and Abraham did not establish he was entitled to a share of the profits from the sale of the property. The court ordered Abraham to transfer title to the property to JFK, and the property sold. Appellants filed 19 objections to alleged inaccuracies, omissions, and ambiguities in the proposed statement of decision.

In November 2017, the court issued a combined final statement of decision and judgment (judgment), which was nearly identical to its proposed statement of decision. The judgment, however, added the following: “Based upon the above analysis, cross complainant’s claims fail, as the court finds there to be no fraud or breach of fiduciary duty on behalf of JFK or Javaheri. As a result, the court declines to dissolve JFK.”

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<sup>3</sup> Although exhibit 16 was admitted into evidence, the court’s minute order states that this exhibit “does not exist.” Appellants did not provide us with any of the trial exhibits.

After the judgment was entered in their favor, JFK and Javaheri moved to recover their attorney's fees and costs from Fariba and Abraham as provided by JFK's operating agreement. In the alternative, JFK and Javaheri sought to recover their attorney's fees from JFK, with 100 percent of those fees paid from Fariba's membership interest in JFK and/or from her share of the proceeds after the sale of the property.

Appellants opposed the motion because Abraham was not a party to the operating agreement, there was no prevailing party in the litigation, and the operating agreement does not allow members to reimburse other members or JFK for attorney's fees. In their reply, JFK and Javaheri argued the reciprocity provision in Section 1717 allowed JFK and Javaheri to obtain attorney's fees from Fariba and Abraham.

In March 2018, the court granted JFK's and Javaheri's motion in the total amount of \$71,032.50. The court found that JFK and Javaheri were prevailing parties in the litigation. The court also found that Section 1717 made the operating agreement's indemnification provision reciprocal, "allowing the corporation to seek reimbursement of its own fees expended in suing the officers." The court concluded that as JFK's agent, Abraham could seek indemnification of his attorney's fees under the operating agreement. Accordingly, "the reciprocity principle" of Section 1717 also applied to Abraham.

Appellants appeal from the judgment and the attorney's fees order.

## DISCUSSION

### 1. The Challenge to the Judgment

Appellants argue the judgment should be reversed because the court disregarded their objections to its proposed statement of decision. Specifically, they contend the court ignored Abraham's quantum meruit claim for compensation for services he provided to JFK. They also contend the court erred by failing to adjudicate Fariba's statutory claim for dissolution of JFK. Both contentions are meritless.

#### 1.1. Standard of Review

In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. (*Cuiellette v. City of Los Angeles* (2011) 194 Cal.App.4th 757, 765.) We apply a substantial evidence standard of review to the trial court's findings of fact. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364.) Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. (*Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.)

The court's statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case. (*Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1379–1380.) "When this rule is applied, the term 'ultimate fact' generally refers to a core fact, such as an essential element of a claim." (*Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513.) "Ultimate facts are distinguished from evidentiary facts and from legal

conclusions.” (*Ibid.*) Thus, a court is not expected to make findings about “detailed evidentiary facts or to make minute findings as to individual items of evidence.” (*Nunes Turfgrass, Inc. v. Vaughan-Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1525.) In addition, “[e]ven though a court fails to make a finding on a particular matter, if the judgment is otherwise supported, the omission is harmless error unless the evidence is sufficient to sustain a finding in favor of the complaining party which would have the effect of countervailing or destroying other findings.” (*Ibid.*; accord, *Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 67–68.)

## **1.2. Abraham’s Quantum Meruit Recovery**

“ ‘The measure of recovery in *quantum meruit* is the reasonable value of the services rendered *provided* they were of direct benefit to the defendant.’ [Citations.] [¶] The underlying idea behind quantum meruit is the law’s distaste for unjust enrichment. If one has received a benefit which one may not justly retain, one should ‘restore the aggrieved party to his [or her] former position by return of the *thing* or its *equivalent* in money.’ [Citation.]” (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449.)

Appellants objected that the court did not resolve in its proposed statement of decision whether Abraham was entitled to equitable relief, including quantum meruit relief. Appellants did not, however, include a quantum meruit claim in their cross-complaint or request quantum meruit in their prayer; nor does the record show that they sought leave to amend the cross-complaint to add a quantum meruit claim. (Cf. *Jogani v. Superior Court* (2008) 165 Cal.App.4th 901, 906 [describing quantum meruit as “a quasi-contract action to recover the reasonable value



of services rendered”].) Accordingly, the court did not err in failing to allow Abraham to recover under the theory of quantum meruit or in failing to address this theory of recovery in its proposed statement of decision or subsequent judgment.

To the extent appellants’ argument involves the sufficiency of the evidence to support a quantum meruit finding, they forfeited this argument by failing to provide us with any of the 67 exhibits admitted into evidence at trial. (See *Christie v. Kimball* (2012) 202 Cal.App.4th 1407, 1412 [“[w]e cannot presume error from an incomplete record”]; *Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955 [because “the record does not contain all the documents ... we decline to find error on a silent record”].)

### **1.3. Fariba’s Claim for Dissolution of JFK**

Appellants also contend the court’s proposed statement of decision and subsequent judgment ignored Fariba’s request for dissolution of JFK under Corporations Code section 17707.03 (hereafter Section 17707.03). We have several responses to this argument.

First, appellants never cited Section 17707.03 in their cross-complaint, post-trial brief, or their objections to the court’s proposed statement of decision. Second, after receiving appellants’ objections to its proposed statement of decision, the court addressed Fariba’s dissolution request in the judgment: “Based upon the above analysis, cross complainant’s claims fail, as the court finds there to be no fraud or breach of fiduciary duty on behalf of JFK or Javaheri. As a result, the court declines to dissolve JFK.” Third, and in any event, the court was not required to make detailed findings concerning all of the statutory grounds for involuntary dissolution of a corporation under Section 17707.03. Fourth, given that dissolution of a company

under this statute is discretionary, appellants have not shown that the court abused its discretion based on *all* the evidence presented at trial.

## **2. The Challenge to the Attorney's Fees Order**

We now address appellants' challenge to the court's post-judgment order awarding JFK and Javaheri attorney's fees. "On review of an award of attorney fees after trial, the normal standard of review is abuse of discretion. However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees and costs in this context have been satisfied amounts to statutory construction and a question of law.'" (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.)

Here, appellants do not challenge the amount of the fees awarded. Instead, they challenge the court's determination that Article V in JFK's operating agreement and the reciprocity provision in Section 1717 allow JFK and Javaheri to obtain attorney's fees from Fariba and Abraham. We review this question of law de novo.

California follows what is commonly referred to as the "American rule," which provides that each party to a lawsuit must ordinarily pay his or her own attorney's fees. (*Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 504.) The American rule is codified by Code of Civil Procedure section 1021, which states in pertinent part: "Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties[.]" (See *Bruno v. Bell* (1979) 91 Cal.App.3d 776, 781.)

One of the statutes that addresses fee shifting is Section 1717. Subdivision (a) of that section provides: “In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs.”

While Section 1717 makes unilateral attorney’s fees provisions reciprocal and applicable to the entire agreement (*Myers Building Industries, Ltd. v. Interface Technology, Inc.* (1993) 13 Cal.App.4th 949, 968 (*Myers Building*)), “[t]he very essence of an indemnity agreement is that one party hold the other harmless from losses resulting from certain specified circumstances. The provisions of [S]ection 1717 were never intended to inflict upon the indemnitee the obligation to indemnify his indemnitor in similar circumstances. Indemnification agreements are intended to be unilateral agreements.” (*Id.* at p. 973.) And “the inclusion of attorney fees as an item of loss in a third party claim indemnity provision does not constitute a provision for the award of attorney fees in an action on contract as is required to trigger operation of [S]ection 1717.” (*Campbell v. Scripps Bank* (2000) 78 Cal.App.4th 1328, 1337.)

The operating agreement provision that the court construed as an attorney’s fees clause, Article V, is captioned “INDEMNIFICATION OF MEMBERS, MANAGERS, AGENTS AND EMPLOYEES,” and specifies that the “Limited Liability Company,” JFK, shall “*indemnify* any person who was or is a

party or is threatened to be made a party,” against expenses, judgments, and fines, “including attorney[’s] fees.” (*Italics added.*)

“A clause which contains the words ‘indemnify’ ... is an indemnity clause which generally obligates the indemnitor to reimburse the indemnitee for any damages the indemnitee becomes obligated to pay third persons.” (*Myers Building, supra*, 13 Cal.App.4th at p. 969.) Also significant, as in *Building Maintenance Service Co. v. AIL Systems, Inc.* (1997) 55 Cal.App.4th 1014, is the absence of any contractual language in Article V of the operating agreement providing for attorney’s fees in an action between the parties. (*Id.* at p. 1030.) Further, section 10 of Article V emphasizes that other than a member’s obligation to make certain capital contributions, the member “shall have no liability or obligation for any liabilities, debts or obligations of” JFK.

In its order finding that Article V is an attorney’s fees provision, the court relied on *Wilshire-Doheny Associates, Ltd. v. Shapiro* (2000) 83 Cal.App.4th 1380. In *Wilshire-Doheny*, the court considered whether particular indemnity provisions were limited to third party claims. In that case, a corporation agreed to indemnify two of its corporate officers for any claims or action brought against them in their capacity as corporate officers. (*Id.* at pp. 1387, 1394–1395.) The corporation sued the two officers for actions arising out of their conduct as corporate officers. (*Id.* at pp. 1385–1386.) The indemnity provisions specifically applied to an “‘action or suit by or in the right of the corporation to procure a judgment in its favor.’” (*Id.* at p. 1395.) Noting this language in particular, the *Wilshire-Doheny* court held the provision afforded the officers a right to attorney’s fees in an action on the contract. (*Id.* at pp. 1396–1397.)

Significantly, JFK’s operating agreement contains no similar language providing for a right to recover attorney’s fees. Indeed, Article V does not specifically refer either to actions to enforce the operating agreement or to the prevailing party. Rather, it is a third-party indemnity provision. The court erred in construing it otherwise.<sup>4</sup> To find a right to attorney’s fees in “a direct action under an ordinary indemnity provision, as here, would [transform] every agreement containing a standard third party indemnity clause [into] a prevailing party attorney fee clause. This is particularly inappropriate because [S]ection 1717, subdivision (a), which governs the award of contractual attorney fees, applies only when the contract ‘specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party ... .’” (*Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 605–606.)

In sum, Article V in the operating agreement is an indemnity provision, not an attorney’s fees clause. We therefore reverse the order requiring appellants to pay JFK’s and Javaheri’s attorney’s fees.

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<sup>4</sup> Our conclusion does not affect Javaheri’s right to seek indemnification from JFK for his attorney’s fees as provided by Article V of the operating agreement.

### **DISPOSITION**

The judgment is affirmed. The order awarding attorney's fees is reversed. The parties shall bear their own costs on appeal.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.